

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
THE MANAGEMENT GROUP, LLC, ANDREW  
FOX, and LEE HEIMAN,

Plaintiffs,

- against -

ANGEL MUSIC GROUP LTD., NEIL MOFFITT,  
NICK McCABE, JESSIE ANGLES, ANU DHAMI,  
ISABEL PIAGGI, and DAN A. VIDAL,

Defendants.  
----- X

08-02172(PKC)

**ANSWER OF NICK  
McCABE TO AMENDED  
COMPLAINT**

Defendant Nick McCabe, by his attorneys, Karaahmetoglu & Luz Firm LLP, as  
and for his answer to the complaint in this action alleges as follows:

1. Denies the allegations of paragraph 1.
2. Denies the allegations of paragraph 2.
3. Denies the allegations of paragraph 3, except admits that Plaintiffs seek the relief set forth therein.
4. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.
5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.
6. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.
7. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Denies the allegations of paragraph 9, except admits that McCabe is an individual.

10. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Denies the allegations of paragraph 15 as to himself, except admits that this Court has jurisdiction over him, and lacks knowledge as to the other defendants.

16. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Admits the allegations of paragraph 17.

18. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Admits the allegations of paragraph 21.

22. Admits the allegations of paragraph 22.

23. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23.

24. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

26. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

27. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

32. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

43. Denies the allegations of paragraph 43, except admits that he was TMG's Creative Officer, informed plaintiffs of his intention to resign in June 2007, worked on the Pepsi and Bacardi accounts, rejected plaintiffs' attempts to retain him, and in that connection was threatened with a lawsuit over plaintiffs' supposed "confidential" information.

44. Denies the allegations of paragraph 44 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

45. Denies the allegations of paragraph 45 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

46. Denies the allegations of paragraph 46 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

47. Denies the allegations of paragraph 47, except admits that TMG agreed to modify his employment agreement, and respectfully refers the Court to that modified employment agreement for its complete terms, meaning, and interpretation.

48. Denies the allegations of paragraph 48, except lacks knowledge or information as to TMG's knowledge or intentions.

49. Denies the allegations of paragraph 49, except admits that he sent certain e-mails to TMG and respectfully refers the Court to those e-mails for their true meaning and interpretation.

50. Denies the allegations of paragraph 50, except lacks knowledge or information as to what TMG "learned" or "discovered."

51. Denies the allegations of paragraph 51 as they pertain to him, and lacks knowledge or information as to the allegations concerning the other defendants.

52. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.

53. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.

55. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.

56. Paragraph 56 requires no responsive pleading.

57. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57.

58. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58.

59. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59.

60. Paragraph 60 requires no responsive pleading.

61. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61.

62. Denies the allegations of paragraph 62 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

63. Denies the allegations of paragraph 63, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

64. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64.

65. Denies the allegations of paragraph 65.

66. Denies the allegations of paragraph 66.

67. Denies the allegations of paragraph 67.

68. Paragraph 68 requires no responsive pleading.

69. Denies the allegations of paragraph 69, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

70. Denies the allegations of paragraph 70, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

71. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71.

72. Denies the allegations of paragraph 72 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

73. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73.

74. Denies the allegations of paragraph 74 and respectfully refers the Court to the Employment Agreement for its true meaning and interpretation.

75. Denies the allegations of paragraph 75.

76. Denies the allegations of paragraph 76.

77. Paragraph 77 requires no responsive pleading.

78. Denies the allegations of paragraph 78, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

79. Denies the allegations of paragraph 79.

80. Denies the allegations of paragraph 80.

81. Denies the allegations of paragraph 81.

82. Paragraph 82 requires no responsive pleading.

83. Denies the allegations of paragraph 83, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

84. Denies the allegations of paragraph 84.

85. Denies the allegations of paragraph 85.

86. Denies the allegations of paragraph 86.

87. Paragraph 87 requires no responsive pleading.

88. Denies the allegations of paragraph 88, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

89. Denies the allegations of paragraph 89.

90. Denies the allegations of paragraph 90.

91. Paragraph 91 requires no responsive pleading.

92. Denies the allegations of paragraph 92.

93. Denies the allegations of paragraph 93.

94. Denies the allegations of paragraph 94.

95. Denies the allegations of paragraph 95.

96. Paragraph 96 requires no responsive pleading.

97. Denies the allegations of paragraph 97, avers that it purports to state a legal conclusion and leaves the plaintiffs to their proofs.

98. Denies the allegations of paragraph 98.



- 99. Denies the allegations of paragraph 99.
- 100. Denies the allegations of paragraph 100.
- 101. Denies the allegations of paragraph 101.
- 102. Denies the allegations of paragraph 102.
- 103. Paragraph 103 requires no responsive pleading.
- 104. Denies the allegations of paragraph 104.
- 105. Denies the allegations of paragraph 105.
- 106. Denies the allegations of paragraph 106.
- 107. Denies the allegations of paragraph 107.
- 108. Denies the allegations of paragraph 108.
- 109. Denies the allegations of paragraph 109.
- 110. Denies the allegations of paragraph 110.
- 111. Paragraph 111 requires no responsive pleading.
- 112. Denies the allegations of paragraph 112.
- 113. Denies the allegations of paragraph 113.
- 114. Denies the allegations of paragraph 114.
- 115. Denies the allegations of paragraph 115.
- 116. Denies the allegations of paragraph 116.
- 117. Paragraph 117 requires no responsive pleading.
- 118. Denies the allegations of paragraph 118.
- 119. Denies the allegations of paragraph 119.
- 120. Denies the allegations of paragraph 120.
- 121. Denies the allegations of paragraph 121.

- 122. Denies the allegations of paragraph 122.
- 123. Denies the allegations of paragraph 123.
- 124. Denies the allegations of paragraph 124.
- 125. Denies the allegations of paragraph 125.
- 126. Denies the allegations of paragraph 126.
- 127. Denies the allegations of paragraph 127.
- 128. Denies the allegations of paragraph 128.
- 129. Paragraph 129 requires no responsive pleading.
- 130. Denies the allegations of paragraph 130.
- 131. Denies the allegations of paragraph 131.
- 132. Denies the allegations of paragraph 132.
- 133. Paragraph 133 requires no responsive pleading.
- 134. Denies the allegations of paragraph 134.
- 135. Denies the allegations of paragraph 135.
- 136. Denies the allegations of paragraph 136.

**FIRST AFFIRMATIVE DEFENSE**

- 137. Plaintiffs' equitable claims are barred by plaintiffs' unclean hands.

**SECOND AFFIRMATIVE DEFENSE**

- 138. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

- 139. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

140. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

## **FIFTH AFFIRMATIVE DEFENSE**

141. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' prior breach of the McCabe Agreement.

## **SIXTH AFFIRMATIVE DEFENSE**

142. Plaintiffs were not damaged by any act of McCabe.

## **SEVENTH AFFIRMATIVE DEFENSE**

143. Plaintiffs' losses, if any, were proximately caused by the intervening acts of third parties over whom McCabe had no control.

## **EIGHTH AFFIRMATIVE DEFENSE**

144. Plaintiffs' anti-competition agreement is void as a matter of public policy.

## **NINTH AFFIRMATIVE DEFENSE**

145. The fraudulent inducement claim is an impermissible attempt to convert a contract claim into a tort.

May 15, 2008

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